Supreme Court, U.S.
FILED

No. 991365 DEC 13 1999

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

AURELIO NICOLAS,

Petitioner,

v.

PANAMA CANAL COMMISSION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

PETITION FOR WRIT OF CERTIORARI

AURELIO NICOLAS, Pro Se
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PACKARD PRESS / APPELLATE DIVISION, 1617 JFK BOULEVARD, PHILA., PA. 19103 (215) 563-9000

28pp

QUESTIONS PRESENTED

1. Does the Constitution of the United States of America empowers officials of an agency of the government of the United States operating in a foreign country to discriminate against the nationals of that country?

2. Is there a provision anywhere in the Constitution of the United States that promulgates and encourages racial discrimination of any kind or form?

3. Is there any provision in the Constitution of the United States of America that relieves any Government Agency or official of its primary responsibility to assure nondiscrimination in employment?

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Executive Order 11478 1

Title VII, Civil Rights Act of 1964 as amended, Section 2000e-16c and 16e 1

Petitioner, Aurelio N. Nicolas, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of The United States Court of Appeals for The District of Columbia dismissing my allegations of race and age discrimination suffered from July 13, 1970 to February 29, 1992 when I was employed as an Electrician by the Panama Canal Commission. I request that full consideration be given to all inquiries, laws and legal aspects related to my allegations.

OPINION BELOW

Anderson, Vincent v. Zubieta, Alberto Title VII of the Civil Rights Act of 1964, Pub. L. No 88-352, 78 Stat. 241(codified as amended at 42 U.SC. 2000e to 2000e-17

JURISDICTION

Jurisdiction of this court is invoked under Title VII of the Civil Rights Act of 1964 as amended (1994)

CONSTITUTIONAL PROVISIONS AND STATUTES

Petitioner's constitutional rights to a fair and impartial legal process, as guaranteed under the Articles Five, Six, and First, Ninth and Thirteenth Amendments of the Constitution of the United States Of America are relevant to this case. Likewise apposite are 29 CRF Ch. XVI. 57 FR 12646 § 1614.101, Executive Order 11478, and Title VII, Civil Rights Act of 1964 as amended, Section 2000e-16c and 16e.

STATEMENT OF THE CASE

The reckless and unlawful discrimination practices perpetrated by the managers of the Panama Canal Commission against me during the plus twenty one years of employment prevented me from obtaining promotions.

REASONS FOR GRANTING THE WRIT

Since both the District Court and the Court of Appeals for the District of Columbia have upheld the Defendant's arguments based on my national origin to make their decisions, therefore granting the Writ will assure my constitutional claim.

CONCLUSION

For the foregoing reasons presented the petitioner respectfully prays that this Supreme Court will find it constitutionally necessary to reverse the Summary Affirmance of the United States Court of Appeals for the District of Columbia and allow justice the system to work.

Respectfully submitted,

AURELIO NICOLAS, Pro Se
250 Plaza Blvd. Apt. G3
Morrisville, PA 19067
Phone No. 215-428-1432

APPENDIX

APPENDIX A

UNITED STATES GOVERNMENT

memorandum

DATE: May 30, 1991

REPLY TO ATTN OF: Equal Opportunity Director

SUBJECT: Inquiry — Aurelio N. Nicolas (PCC Case No. 313)

TO: Director, Office of Executive Administration

1. This is in response to the request made by the Marine Director on March 26, 1991, to conduct an inquiry into the allegation of discrimination on the basis of race (Negro) and age (47) made by Mr. Aurelio N. Nicolas in the grievance he filed on March 18, 1991.

2. An inquiry (enclosed) was conducted by this office into the EO allegation presented by the grievant. Mr. Nicolas charged that his non-selection for the position of Electrical Leader, ML-10, Position No. 430126, advertised in Locks Division P.O. 6035, was due to discrimination on the basis of his race and age. Following is the issue which was investigated:

> Whether or not the agency discriminated against the grievant on the basis of his race (Negro) and age (47) when: (1) The Locks Division Promotion Criteria, Evaluations and Selection Process, as applied, excluded him from the "Best Qualified" group; and (2) he was non-selected for the position vacancy of Electrician Leader, ML-10, advertised in P.O. 6035.

3. The inquiry procedure included an administrative analysis by the Office of Personnel Administration (OPA) of the appraisal schedule used for the evaluation and selection for subject position. The purpose of the analysis was to determine if the appraisal and selection procedures utilized by the appraisal board met with merit promotion requirements.

4. The record was reviewed for concrete evidence of discrimination based on race and age. Although such a clear-cut finding cannot be supported by the evidence of record, by the same token neither can the record support a clear-cut finding of non-discrimination.

EO, May 30, 1991
Subject: Inquiry — Aurelio N. Nicolas

5. As an initial step, it is incumbent upon the grievant to establish a prima facie case; that is, he must show that he is a member of a protected group (race: black, and age: 47); that he applied for an open job or position for which he was qualified; that he was non-selected for the position, and that, rather, a similarly situated applicant outside his protected group was selected. On the other hand, management has to present evidence that the decision not to select the grievant was based on legitimate non-discriminatory grounds. Beyond this point, burden then shifts to the grievant to show that management's proffered reasons are a pretext to mask an illegal discriminatory motive.

6. Although the grievant established a prima facie case of discrimination, he has failed to show that be was passed over for promotion in favor of candidates with lower numerical ratings. The record indicates that the grievant did not rank among the best qualified. In this regard, although the grievant establishes well his work experience and credentials for subject position, he has not shown with evidence that he was not ranked in the best qualified group due to his race and age. Although the grievant makes a credible comparative analysis of his work experience and credentials with those of the selectee's (Exhibit 3), he presents no direct evidence that the ratings assigned to him individually in the appraisal process were influenced by his race and age.

7. On the other hand, the record indicates that the grievant bad never worked under the supervision of any of the appraisal board members; accordingly, at appraisal time none of the board members had first-hand knowledge of the grievant's work experience and performance. All three board members stated that they bad no knowledge of the grievant's race and age at that time. The selecting official stated that he had seen "him around" but that the grievant had never worked under his supervision. The record indicates that the procedure used by the selecting official was to select the best qualified applicant with the highest scores as assigned by the board

members (Exhibit 10-1). As the record stands, it does not present evidence of discriminatory motive on the part of the appraisal board members nor of the selecting official. The record, however, fails to substantiate how and on what basis the ratings were determined.

8. The review conducted by OPA officials of the appraisal schedule and evaluation procedures used indicates that the selection record has been improperly documented and that, therefore, it is difficult to determine whether a harmful procedural error has occurred (Exhibit 6). The Chief, Employment and Placement Branch has stated that the points assigned to each candidate have been subjective; however, it cannot be proven that these were not fairly assigned (Exhibit 6-5).

9. According to the analysis made by OPA the appraisal schedule and selection procedures used by Locks Division clearly lack the important criteria and documentation which would indicate the basis for the assignment of points. For example, there is no record of a supervisor's appraisal for each candidate, and in those cases where the factors should have been rated the same for all candidates, (i.e. factors 2, 4, 5 and 10), this did not occur. Additionally, there is no documentation showing the total number of points obtained by each candidate, nor is there any documentation indicating the cut-off for the "Best Qualified" group. Also, candidates who placed in the "Best Qualified" group were also inappropriately listed in the "Qualified" group (Exhibit 6-3). OPA has recommended to Locks Division officials that in the future their evaluation methods should be properly documented so that upon review the selection records can clearly demonstrate *how* the candidates were rated, and *how* the "Best Qualified" candidates were identified for selection consideration (Exhibit 6-5). OPA officials have further stated:

> "Evaluation factors 3, 6, 7 and 9 should have included a documented supervisory appraisal for each candidate. Even though the division indicated

> that the three board members knew the applicants, not all applicants had had one of the board members as an immediate supervisor. Board members discuss among themselves and share, as appropriate, their knowledges related to the candidates' work performance and other important evaluation factors. Candidates should be given the opportunity to be evaluated by their immediate supervisors to provide factual first-hand knowledge of performance, personality characteristics, conduct, etc." In this regard, please refer also to Exhibits 7-1, 8-1, 9-2, 10-1, 10-3 and 11-1.

10. In conclusion, the subjective manner in which the appraisal procedures were conducted and the lack of proper documentation has resulted in a situation wherein it is not possible to substantiate a clear-cut finding of discrimination or of nondiscrimination. Likewise, in accordance with the review performed by OPA officials, it is difficult to determine whether a harmful procedural error has occurred or not (Exhibits 6-3 and 6-5).

11. In view of the foregoing, and taking into consideration that the selection and appraisal procedures used appear to have had an adverse impact upon the grievant, it is recommended that an informal resolution of this grievance be explored. For example, feasibility of giving the grievant priority consideration for any future promotional opportunity for which he applies and for which he qualifies may be considered. This recommendation is made in accordance with the guidelines on "Priority Consideration in the Federal Sector" provided by the Equal Employment Opportunity Commission (EEOC), which advises that the EEOC considers it appropriate in certain instances to grant priority consideration, even absent discrimination. This alternative, then, is offered as a means of resolving informally the grievance filed by Mr. Nicolas. Subject guidelines are attached for your review and consideration.

EO, May 30, 1991
Subject: Inquiry — Aurelio N. Nicolas

12. If it is decided to explore resolution of the grievance along these lines, I would recommend that the Office of Industrial Relations be contacted to insure that contractual and statutory requirements are met.

For example, some mechanism would have to provide for the fact that priority consideration under these circumstances does not fall within the "exceptions" listed in Section 19.02 of the merit promotion procedures article of the non-professional bargaining unit agreement.

/s/ Tilcia R. McTaggart

Tilcia R. McTaggart
Equal Opportunity Director

Enclosures: Inquiry Files (2 sets)
Guidelines on Priority Consideration

APPENDIX B

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 19848
Washington, D.C. 20036

Nicolas N. Aurelio	:	
Appellant,	:	Appeal No. 02930028
v.	:	
Gilberto Guardia	:	
Administrator,	:	
Panama Canal Commission,	:	
Agency.	:	

DECISION

Appellant filed an appeal with this Commission from the decision of an arbitrator on his grievance regarding allegations of employment discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* The record establishes that appellant, a citizen of Panama, has alleged discrimination arising out of his employment in Panama. Section 702 of Title VII specifically states that its provisions do not apply to an employer with respect to employment of aliens outside of any State. 42 U.S.C. § 2000e-1(a). Consequently, appellant's allegations of discrimination are not within the purview of Title VII. *Howell v. Department of State,* EEOC Appeal No. 01930262 (December 18, 1992); *Moore v. Department of the Navy,* EEOC Appeal No. 01871663 (September 29, 1987). Accordingly, appellant's appeal is dismissed for lack of jurisdiction.

STATEMENT OF APPELLANT'S RIGHTS - ON APPEAL RECONSIDERATION (M1092)

The Commission may, in its discretion, reconsider the decision in this case if the appellant or the agency submits a written request containing arguments or evidence which tend to establish that:

1. New and material evidence is available that was not readily available when the previous decision was issued; or
2. The previous decision involved an erroneous interpretation of law, regulation or material fact, or misapplication of established policy; or
3. The decision is of such exceptional nature as to have substantial precedential implications.

Requests to reconsider, with supporting arguments or evidence, *MUST BE FILED WITHIN THIRTY (30) CALENDAR DAYS* of the date you receive this decision, or *WITHIN TWENTY (20) CALENDAR DAYS* of the date you receive a timely request to reconsider filed by another party. Any argument in opposition to the request to reconsider or cross request to reconsider *MUST* be submitted to the Commission and to the requesting party *WITHIN TWENTY (20) CALENDAR DAYS* of the date you receive the request to reconsider. *See* 29 C.F.R. § 1614.407. All requests and arguments must bear proof of postmark and be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, D.C. 20036. In the absence of a legible postmark, the request to reconsider shall be deemed filed on the date it is received by the Commission.

RIGHT TO FILE A CIVIL ACTION (S1092)

You have the right to file a civil action in an appropriate United States District Court WITHIN NINETY (90) CALENDAR DAYS of the date that you receive this decision. If you file a civil action, You MUST NAME AS THE

DEFENDANT IN THE COMPLAINT THE PERSON WHO IS THE OFFICIAL AGENCY HEAD OR DEPARTMENT HEAD, IDENTIFYING THAT PERSON BY HIS OR HER FULL NAME AND OFFICIAL TITLE. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.** 29 C.F.R. § 1614.410

RIGHT TO REQUEST COUNSEL (Z1092)

If you decide to file a civil action, and if you do not have or cannot afford the services of an attorney, you may request that the Court appoint an attorney to represent you and that the Court permit you to file the action without payment of fees, costs, or other security. *See* Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791, 794(c). **The grant or denial of the request is within the sole discretion of the Court.** Filing a request for an attorney does not extend your time in which to file a civil action. Both the request and the civil action must be filed within the time limits as stated in the paragraph above ("Right to File A Civil Action").

FOR THE COMMISSION:

February 7, 1994
Date

/s/ Ronnie Blumenthal
Ronnie Blumenthal, Director
Office of Federal Operations

APPENDIX C

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Aurelio N. Nicolas, Appellant,	:	
v.	:	Request No. 05940401
Robert R. McMillan, Chairman,	:	Appeal No. 02930028
Panama Canal Commission, Agency.	:	

DENIAL OF REQUEST FOR RECONSIDERATION

On February 12, 1994, Aurelio N. Nicolas (hereinafter referred to as appellant), timely initiated a request to the Equal Employment Opportunity Commission (EEOC) to reconsider the decision in *Nicolas N. Aurelio v. Panama Canal Commission,* EEOC Appeal No. 02930028 (February 7, 1994).[1] EEOC Regulations provide that the commissioners may, in their discretion, reconsider any previous Commission decision. 29 C.F.R. §1614.407 (a). The party requesting reconsideration must submit written argument or evidence which tends to establish one or more of the following three criteria: 29 C.F.R. §1614.407 (c) (1) (new and material evidence is available that was not readily available when the previous decision was issued); 29 C.F.R. §1614.407(c) (2) (the previous decision involved an erroneous interpretation of law, regulation or material fact, or misapplication of established policy); and 29 C.F.R. §1614.407 (c) (3) (the previous decision is of such exceptional nature as to have substantial precedential implications). For the reasons set forth herein, appellant's request is denied.

Appellant filed an appeal to the Commission from an April 22, 1991 decision by the agency concerning his grievance

1. Appellant's name should have been identified as Aurelio N. Nicolas.

which alleged discrimination (race and age) regarding his non-selection for the position of Electrician Leader ML-10. Although the case was initially scheduled to go to arbitration, the record indicates the matter was not pursued because appellant retired. The previous decision dismissed appellant's appeal for lack of jurisdiction, finding that appellant was a citizen of Panama. Applying Section 702 of Title VII of the Civil Rights Act of 1964, the previous decision found that the provisions of Title VII do not apply to an employer with respect to the employment of aliens outside of any State, and cited to 42 U.S.C. §2000e-1(a). We note that the proper citation with respect to employment by the Federal government should be Section 717 of Title VII of the Civil Rights Act found at 42 U.S.C. §2000-16(a). *See also* 29 C.F.R. §1614-103(d)(4).

In his request for reconsideration, appellant provides no new information or argument which would meet any of the criteria for reconsideration. 29 C.F.R. §1614.407 (C). Rather, he points out that he was appealing the April 22, 1991 decision, not a later decision dismissing his grievance and submits numerous documents relating to his grievance. The agency did not provide a response to appellant's request.

After a review of appellant's request for reconsideration, the previous decision, and the entire record, the Commission finds appellant's request does not meet the criteria of 29 C.F.R. §1614.407 (c), and it is the decision of the Commission to deny appellant's request. The decision of the Commission in Appeal No. 02930028 remains the Commission's final decision. There is no further right of administrative appeal from the decision of the Commission on this request for reconsideration.

RIGHT TO FILE A CIVIL ACTION (P0993)

This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court. It is the position of the Commission that you have the right to file a civil action in an appropriate United States District Court WITHIN NINETY

(90) CALENDAR DAYS from the date that you receive this decision. You should be aware, however, that courts in some jurisdictions have interpreted the Civil Rights Act of 1991 in a manner suggesting that a civil action must be filed WITHIN THIRTY (30) CALENDAR PAYS from the date that you receive this decision. To ensure that your civil action is considered timely, you are advised to file it WITHIN THIRTY (30) CALENDAR DAYS from the date that you receive this decision or to consult an attorney concerning the applicable time period in the jurisdiction in which your action would be filed. If you file a civil action, YOU MUST NAME AS THE DEFENDANT IN THE COMPLAINT THE PERSON WHO IS THE OFFICIAL AGENCY HEAD OR DEPARTMENT HEAD, IDENTIFYING THAT PERSON BY HIS OR HER FULL NAME AND OFFICIAL TITLE. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work.

RIGHT TO REQUEST COUNSEL (Z1092)

If you decide to file a civil action, and if you do not have or cannot afford the services of an attorney, you may request that the Court appoint an attorney to represent you and that the Court permit you to file the action without payment of fees, costs, or other security. *See* Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq.;* the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§791, 794(c). The grant or denial of the request is within the sole discretion of the Court. Filing a request for an attorney does not extend your time in which to file a civil action. Both the request and the civil action must be filed within the time limits as stated in the paragraph above ("Right to File A Civil Action").

FOR THE COMMISSION:

/s/ Frances M. Hart

Date: 7-15-94

Frances M. Hart
Executive Officer
Executive Secretariat

APPENDIX D

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

AURELIO N. NICHOLAS: *Plaintiff,*	:	Civil Action No. 94-2028(JR)
v.	:	
	:	Filed October 6, 1995
THE PANAMA CANAL COMMISSION,	:	Clerk, U.S. District Court District of Columbia
Defendant.	:	

MEMORANDUM ORDER

Plaintiff, proceeding *pro se*, initiated this action on September 21, 1994, alleging discrimination on the basis of race and age in his non-selection for promotion during the period June 1980 through February 1992, by his former employer, defendant Panama Canal Commission ("Commission"). The Commission is an agency of the United States Government.

Before the Court is defendant's motion to dismiss or, in the alternative, for summary judgment. Defendant argues that plaintiff has failed to state a claim upon which he is entitled to relief because plaintiff is an alien who was employed by the federal government outside the United States.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16, and the Age Discrimination in Employment Act, 29 U.S.C. § 663a, each contain express provisions excluding from statutory coverage aliens employed outside the territorial limits of the United States. 42 U.S.C. § 2000e-16(a), and 29 U.S.C. § 633a(d).

It is undisputed that, at the time of his employment with the Commission, in its division in Panama, plaintiff was also a citizen of Panama. Therefore, plaintiff has no remedy under either Title VII or the ADEA.

Moreover, because Title VII and the ADEA are the exclusive, preemptive legal mechanisms for redressing race and age discrimination in federal employment, there is no

alternative basis upon which this Court can hear plaintiff's claim. *See Brown v. GSA*, 425 U.S. 820 (1976) (Title VII; *Purthill v. Harris*, 658 F.2d 134, *cert. denied* 103 Set. 3110 (3rd Cir. 1981) (ADEA); *accord, Kizas v. Webster*, 707 F.2d 524 (D.C. Cir. 1983).

For the reasons outlined above, plaintiff's claim of discrimination must be dismissed for failure to state a claim upon which relief can be granted. F.R.Civ.P. 12(b)(6). *See Haddon v. Walters*, 43 F.3d 1488, 1490-91 (D.C. Cir. 1995) (proper grounds for dismissal of Title VII action is for failure to state a claim, not lack of subject matter jurisdiction).

Therefore, it is this 5th of October, 1995, hereby ORDERED, that the defendant's motion to dismiss is granted, and this case is dismissed.

_____

United States District Judge

Copies to:

Aurelio N. Nicholas
608 Lincoln Avenue
Apartment #D4
Morrisville, PA 19067
Counsel for Plaintiff

Kimberly N. Tarver
Assistant U.S. Attorney
555 4th Street, N.W
Room 10-106
Washington, D.C. 20001
Counsel for Defendant

APPENDIX E

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
476-3011

December 27, 1995

Aurelio N. Nicolas
608 Lincoln Avenue
Apt. D4
Morrisville, PA 19067

RE: Aurelio N. Nicolas

Petitioner: Aurelio N. Nicolas

The above-entitled petition for writ of certiorari was postmarked December 23, 1995 and received December 27, 1995. The papers are returned for the following reason(s):

The notarized affidavit or declaration of indiqency does not comply with Rule 39 in that in that you must state the amounts hold in the accounts in response to question #3.

The petition fails to comply with the content requirements of Rule 14. A guide for in forma pauperis petitioners and a copy of the Rules of this Court are enclosed. The guide includes a form petition that may be used.

The appendix to the petition does not contain the following documents required by Rule 14.1(i):

*The lower court opinion(s) must be appended from the United States court of appeals.

Please correct and resubmit as soon as possible. Unless the petition is received by this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

A copy of the corrected petition must be served on opposing counsel.

Sincerely,
William K. Suter, Clerk

By: /s/ Troy D. Cahill

Troy D. Cahill
(202) 479-3044

Enclosures

APPENDIX F

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96-5028	:	
	:	September Term, 1995
Aurelio N. Nicholas	:	94cv02028
Appellant	:	
	:	
v.	:	UNITED STATES COURT OF APPEALS
Robert R. McMillan,	:	FOR DISTRICT OF COLUMBIA CIRCUIT
Chairman, Panama	:	Filed FEB 13, 1996
Canal Commission,	:	
Appellee	:	

ORDER

Appellant is seeking review of an order of the United States District Court for the District of Columbia entered on October 6, 1995. The notice of appeal was filed on January 31, 1996, beyond the 60 day period provided by Fed. R. App. Pro. 4(a). Upon consideration of the foregoing, it is

ORDERED that appellant show cause, within thirty (30) days of the date of this order, why the court should not dismiss this appeal for lack of jurisdiction.

Should appellant so desire, a response to this direction to show cause may take the form of a copy of a motion pursuant to either Fed. R. App. Pro. 4(a)(5) or 4 (a)(6) which has been submitted to the District Court.

A copy of the pertinent sections of Fed. R. App. Pro. 4 is attached.

The Clerk is directed to transmit copies of this order to appellant by certified mail, return receipt requested and by first class mail.

FOR THE COURT:
Mark J. Langer, Clerk

BY:
Elizabeth V. Scott
Deputy Clerk

APPENDIX G

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96-5028

September Term, 1996
94cv02028

Aurelio N. Nicolas,
Appellant

v.

Robert R. McMillan,
Chairman,
Panama Canal
Commission,
Appellee

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

Filed January 14, 1997

CLERK

BEFORE: Ginsburg, Sentelle and Henderson, Circuit Judges

ORDER

Upon consideration of the court's order to show cause filed February 13, 1996, and appellant's motion to proceed with appeal filed March 11, 1996, it is

ORDERED that the order to show cause be discharged. It is

FURTHER ORDERED that the motion to proceed with appeal be denied and the appeal is hereby dismissed. Nicolas' notice of appeal was filed outside the 60-day time limit provided by Fed. R. App. P. 4(a)(1). Nicolas failed to request or obtain an extension in the district court. In his motion to proceed with appeal no explanation was provided for this omission.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. *See* D.C. Cir. Rule 41.

Per Curiam

APPENDIX H

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96-5028	**September Term, 1996**
Aurelio N. Nicolas	**94cv02028**
Appellant	
v.	**UNITED STATES COURT OF APPEALS FOR DISTRICT OF COLUMBIA CIRCUIT**
Robert R. McMillan, Chairman, Panama Canal Commission,	**Filed March 19, 1997**
Appellee	

BEFORE: Ginsburg, Sentelle and Henderson, Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing filed January 21, 1997, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:
Robert A. Bonner
Deputy Clerk

APPENDIX I

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96-5086

Aurelio N. Nicolas
Appellant

v.

Togo D. West, Jr.,
Chairman, Panamal
Canal Commission
and Panama
Canal Commission,
Appellees

September Term, 1998
98cv00507

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

Filed AUG 4, 1999

BEFORE: Wald, Ginsburg and Garland, Circuit Judges

ORDER

Upon consideration of the motion for summary affirmance, the response thereto, and the lodged reply; and the motion for leave to file the lodged reply, and response thereto, it is

ORDERED that the motion for leave to file be denied. The Clerk is directed to return the lodged reply. It is

FURTHER ORDERED that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. *See Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam); *Walker v. Washington*, 627 F.2d 541, 545 (D.C. Cir.) (per curiam), *cert. denied*, 449 U.S. 994 (1980). The district court properly determined that appellant was barred by res judicata and collateral estoppel from relitigating the same claim that was finally decided against him. *See Allen v. McCurry*, 449 U.S. 90, 94 (1980).

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R. App.P.41(b); D.C. Cir. Rule 41.

Per Curiam

APPENDIX J

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96-5086 : **September Term, 1999**
: **98cv00507**
Aurelio N. Nicolas :
Appellant : **UNITED STATES COURT OF APPEALS**
: **FOR DISTRICT OF COLUMBIA CIRCUIT**
v. :
: **Filed SEP 16, 1999**
Togo D. West, Jr., :
Chairman, :
Panamal Canal :
Commission and :
Panama Canal – :
Commission, :
Appellees :

BEFORE: Wald, Ginsburg and Garland, Circuit Judges.

ORDER

Upon consideration of appellant's petition for rehearing filed August 18, 1999, it is

ORDERED that petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/ Robert A. Bonner
Robert A. Bonner
Deputy Clerk